



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

201002051

OCT 16 2009

SET:EP:RA:TF

UIL No. 402.00-00

Legend:

Taxpayer A =

Individual B =

Plan X =

Plan Y =

Amount A =

Amount B =

Amount C =

Date 1 =

Date 2 =

Date 3 =

Dear :

This is in response to your letter dated , supplemented by  
correspondence dated , submitted on your behalf by your authorized  
representative, in which you request a waiver of the 60-day rollover requirement  
contained in section 402(c) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested:

Taxpayer A, age 64, received a check totaling Amount A from Plan X on Date 1. Amount A consists of Amount B (Taxpayer A's entire benefit), less Amount C (federal income tax withholding on Amount B). Taxpayer A asserts that her failure to rollover Amount C was due to an error by her financial advisor, Individual B. Taxpayer A represents that, despite her specific instructions and without her knowledge, Individual B failed to return the check to Plan X and, instead, deposited Amount A in Plan Y, resulting in a taxable distribution of Amount C, instead of a rollover.

In June 2008, Taxpayer A was a participant in Plan X and also had an account in Plan Y. It has been represented that Plans X and Y are retirement plans qualified under section 401(a) of the Code. Taxpayer A became eligible for normal retirement under Plan X. Taxpayer A represents that, on Date 2, she informed Plan X by telephone that she requested a direct rollover to Plan Y. During that telephone conversation, Taxpayer A represents that a Plan X official requested that Taxpayer A return the check for Amount A which Taxpayer A received on Date 1. Taxpayer A represents that, on Date 2, she also met with Individual B, who helped her complete a Plan X "Selected Payout Method Form" and helped her elect a direct rollover to Plan Y. At the end of that meeting, Taxpayer A represents that she gave the distribution check from Plan X and the corrected election form to Individual B with instructions to send both items to Plan X. Taxpayer A was unaware of Individual B's failure to carry out her instructions until she received a quarterly statement of her account from Plan Y on or about Date 3. An affidavit from Individual B acknowledges his error in this matter.

Based on the facts and representations, you request a ruling that the Internal Revenue Service (the "Service") waive the 60-day rollover requirement contained in section 402(c)(3) of the Code with respect to Amount C.

Section 402(c) of the Code provides that if any portion of the balance to the credit of an employee in a qualified trust is paid to the employee in an eligible rollover distribution, and the distributee transfers any portion of the property received in such distribution to an eligible retirement plan, and in the case of a distribution of property other than money, the amount so transferred consists of the property distributed, then such distribution (to the extent transferred) shall not be includible in gross income for the taxable year in which paid. Section 402(c)(3)(A) states that such rollover must be accomplished within 60 days following the day on which the distributee received the property. An individual retirement account (IRA) constitutes one form of eligible retirement plan.

Section 402(c)(3)(B) of the Code provides, in relevant part, that the Secretary may waive the 60-day requirement under section 402(c) where the failure to waive such requirement would be against equity or good conscience,

including casualty, disaster, or other events beyond the reasonable control of the individual subject to such requirement. Only distributions that occur after December 31, 2001, are eligible for the waiver under section 402(c)(3)(B) of the Code.

Section 401(a)(31) provides the rules governing "direct transfers of eligible rollover distributions."

Section 1.401(a)(31) of the Income Tax Regulations, Question and Answer-15, provides, in relevant part, that an eligible rollover distribution that is paid to an eligible retirement plan in a direct rollover is a distribution and rollover, and not a transfer of assets and liabilities.

Revenue Procedure 2003-16, 2003-4 I.R.B. 359 (January 27, 2003) provides that in determining whether to grant a waiver of the 60-day rollover requirement pursuant to section 402(c)(3) of the Code, the Service will consider all relevant facts and circumstances, including: (1) errors committed by a financial institution; (2) inability to complete a rollover due to death, disability, hospitalization, incarceration, restrictions imposed by a foreign country or postal error; (3) the use of the amount distributed (for example, in the case of payment by check, whether the check was cashed); and (4) the time elapsed since the distribution occurred.

The information and documentation submitted by Taxpayer A is consistent with her assertion that her failure to accomplish the timely rollover of Amount C within the 60-day rollover period was due to an error committed by Individual B.

Therefore, pursuant to section 402(c)(3)(B) of the Code, the Service hereby waives the 60-day rollover requirement with respect to Amount C. Taxpayer A is granted a period of 60 days from the issuance of this ruling letter to contribute Amount C into an eligible retirement plan account. Provided all other requirements of section 402(c)(3) of the Code, except the 60-day requirement, are met with respect to such contribution, Amount C will be considered a rollover contribution within the meaning of section 402(c)(3) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

A copy of this letter ruling has been sent to your authorized representative pursuant to a power of attorney on file in this office.

If you wish to inquire about this ruling, please contact  
at ( ) . Please address all correspondence to SE:T:EP:RA:T4.

I.D. No.

Sincerely yours,

*for Ada Perry*  
Laura B. Warshawsky, Manager  
Employee Plans, Technical Group 4

Enclosures:  
Deleted Copy of Ruling Letter  
Notice of Intention to Disclose

CC: